IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16264 of 2004

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Between:

M/s. Wintoss Associates, rep. by its Managing Partner,
P.V. Sudhakara Rao S/o. Venkaiah Naidu
Door No.37-1-408(58), Bhagya Nagar, Ongole,
Prakasam District.

..... PETITIONER

AND

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The Employees Provident Fund Organisation Sub-Divisional Office, III Lane, Krishna Nagar, Guntur, rep. by its Assistant Provident Fund Commissioner.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ order or direction, more particularly one in the nature of Writ of Certiorari, calling for the records passed in Order vide No. AP/39828/7A/SRO/GNT/PRM-I/Com.III/04/595 dt.01.07.2004 and consequential order
Dt. 12.07.2004 and quash the same as illegal, arbitrary and violative of principles of natural justice and also violative of Articles 14, 19 and 21 of the Constitution of India besides being the provisions contemplated in Employees Provident Funds and Miscellaneous Provisions Act, 1952 and consequently set aside the same by allowing the Writ Petition and pass.

Counsel for the Petitioner: MRS.A.BALA BARATHI

Counsel for the Respondent: MR.R.N.REDDY (SC FOR EMPLOY'S PF ORG.)

The Court at the admission stage made the following :

ORDER:

Heard learned counsel for the petitioner and learned Standing Counsel Sri R.N. Reddy for the respondent. Both have no objection for disposal of the writ petition at the admission stage.

The petitioner establishment was assessed by the respondent under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act,1952 (for short 'the Act') and demand notice dated 1-7-2004 was issued to pay the contribution along with interest. Thereafter without informing further date of enquiry, the respondent passed ex-parte order on 12-7-2004. Against the same, the petitioner filed an appeal under Section 7 (4) of the Act before the Assistant Provident Fund Commissioner for setting aside the ex-parte order. The same was dismissed by the impugned proceedings dated 12-8-2004. Questioning the same, the present writ petition is filed contending that the petitioner was assessed by the respondent under Section 7(A) of the Act and appeared for enquiry on all days, but without informing the further date, the respondent passed ex-parte order and dismissal of appeal filed under Section 7(4) of the Act is arbitrary and illegal.

Whether, on the relevant date when the petitioner appeared further date of enquiry is made known to him or not, is a disputed question of fact. Since, the petitioner has a remedy of appeal against the assessment order passed by the authority under Section 7(A) of the Act before the Appellate Tribunal, without availing such remedy he cannot invoke the jurisdiction of this court. Since the appellate Tribunal is not functioning as the Member who was appointed has not joined, the petitioner moved this court by way of present writ petition. Having regard to the said fact, interest of justice will be met, if the petitioner deposits 50% of the due amount so assessed within a period of four weeks from today, further proceedings pursuant to the impugned order shall not be enforced till the disposal of the appeal.

The petitioner is directed to file an appeal before the appellate Tribunal within a period of four weeks from today. On production of copy of the proceedings evidencing the deposit of 50% of the amount by the petitioner, the appellate Tribunal shall take up the appeal and dispose of the same without insisting for deposit of the amount demanded.

With the above direction, the Writ Petition is disposed of at the admission stage.

A. Gopal Reddy, J.

14th September, 2004.

Js.

ASSISTANT REGISTRAR

To

1 The Assistant Provident Fund Commissioner, Employees

Provident Fund Organisation Sub-Divisional Office,

III Lane, Krishna Nagar, Guntur.

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